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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 474

MARTIN B. ROBINSON,

Petitioner,

vs.

STATE OF MICHIGAN.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF MICHIGAN.**

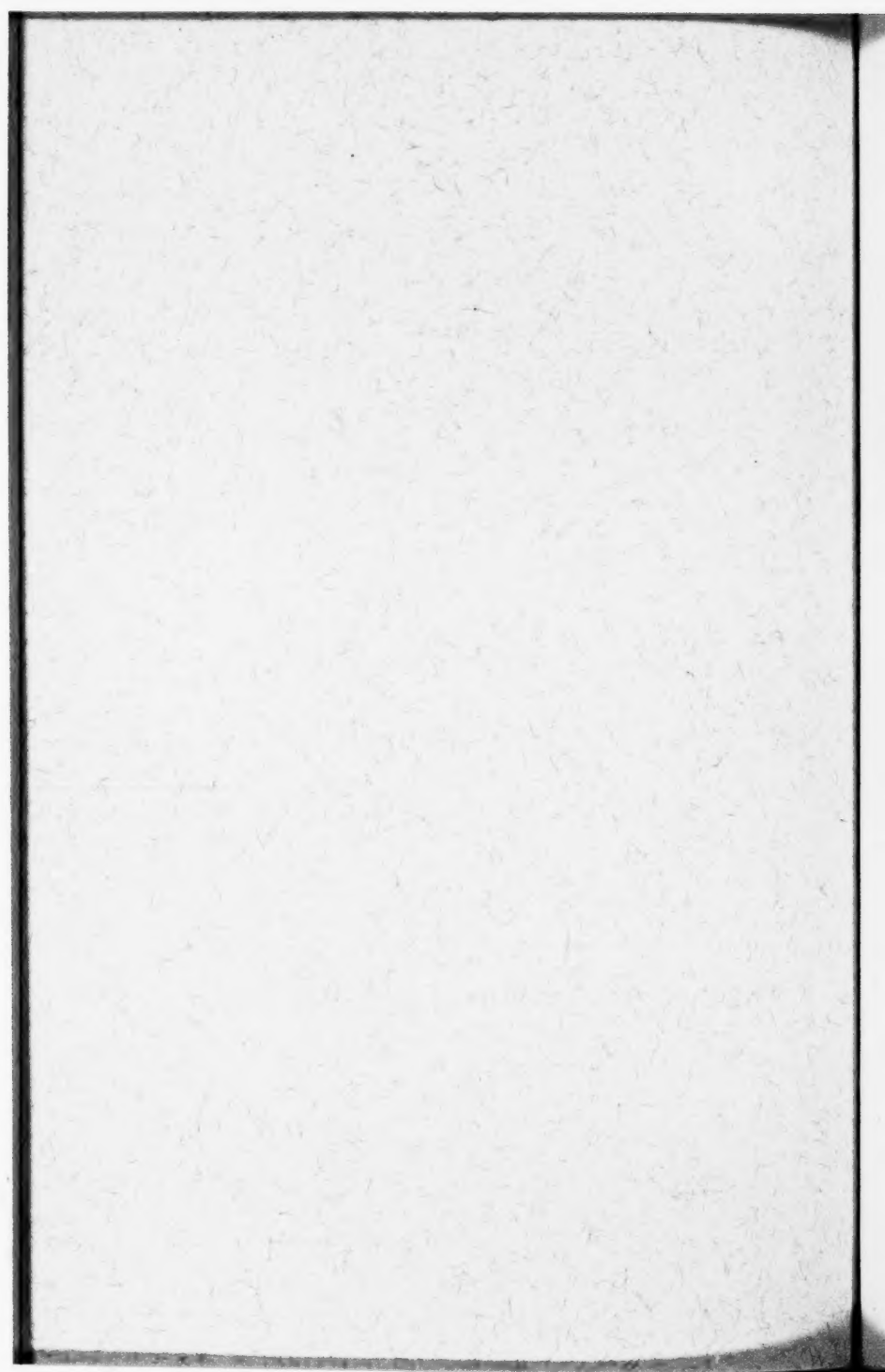
EDMUND D. CAMPBELL,

Counsel for Petitioner.

DOUGLAS, OBEAR AND CAMPBELL,

Washington, D. C.,

Of Counsel.



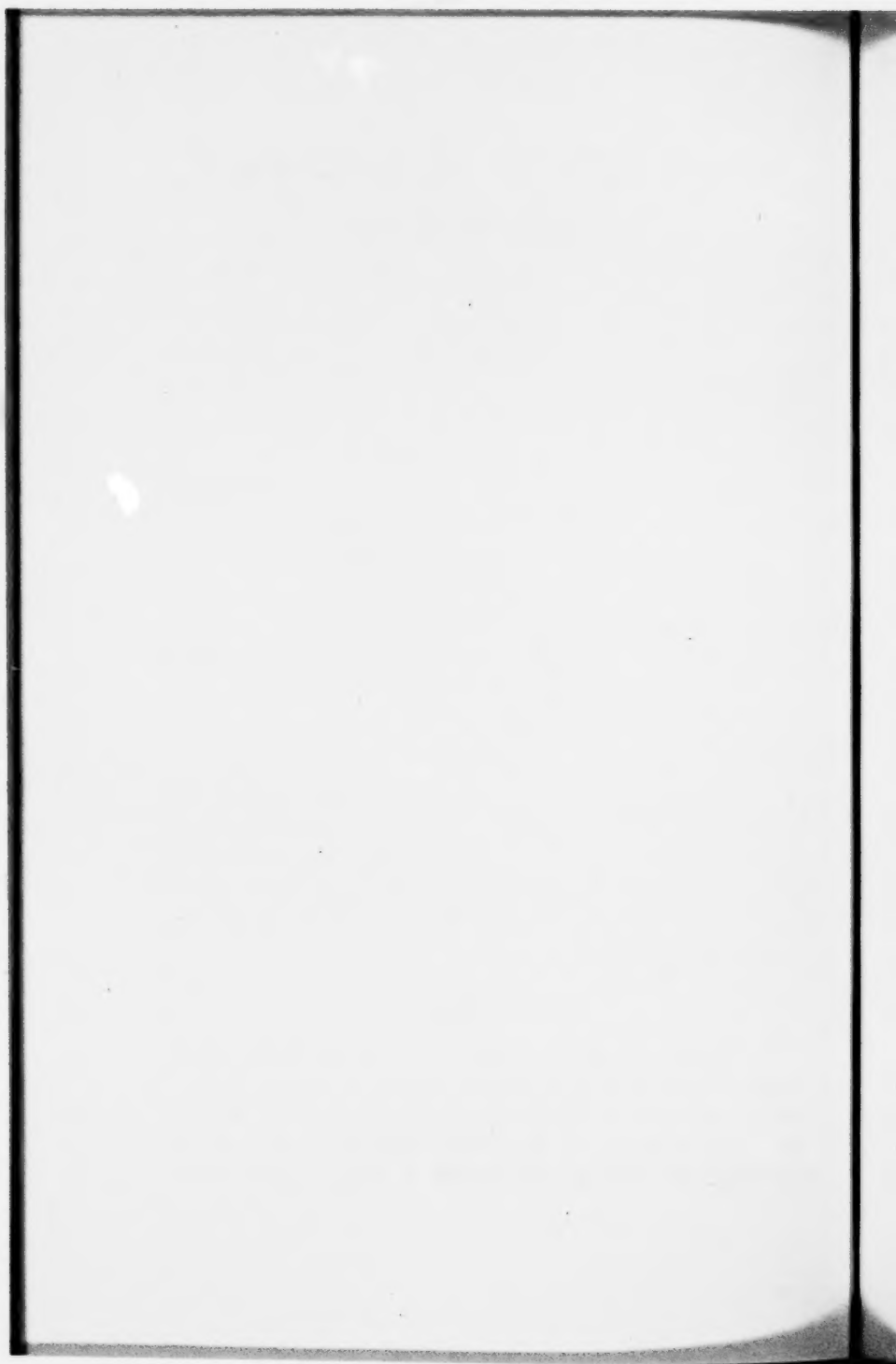
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The petitioner, Martin B. Robinson, prays that a writ of certiorari issue to review a judgment convicting petitioner of conspiracy to obstruct administration of justice, which judgment was entered against the petitioner by the Supreme Court of the State of Michigan in the above case on September 7, 1943.

Opinions Below.

The opinion of the Supreme Court of Michigan in the original hearing of petitioner's appeal, rendered June 7, 1943, is reported in 306 Michigan 167, and in 10 N. W. (2d) 817. The decision of the court denying a petition for rehearing was rendered September 7, 1943. There was no

opinion on said decision and the memorandum thereof has not been reported.

Question Presented.

Whether the criminal conviction of the petitioner in the State court, following a "compulsory confession" which he made before a grand jury, after having been held incommunicado for four days, and the subsequent use of portions of such confession in the trial court, violated petitioner's rights under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Basis of Jurisdiction.

Timely objection was made in the Supreme Court of Michigan to the use of the confession alleged to have been given by the petitioner before the grand jury, under duress, on the ground that defendant's constitutional rights were violated.¹ Objection was also made by the petitioner that his constitutional privilege against self-incrimination had been violated,² and that an information against him based upon such testimony should not stand.³ The Supreme Court of Michigan held against the second and third of these contentions (R. 641), and ignored the first contention.

This court has authority to review the conviction, under the above circumstances, pursuant to Section 237 (b) of the Judicial Code, as amended, 28 U. S. C. A., Sec. 344 (b).

Statement of Facts.

Petitioner was admittedly the *victim* of an armed robbery in Detroit, Michigan, and \$1600 was thereby stolen from

¹ Appellant's brief in Supreme Court of Michigan (R. 601); Application for rehearing (R. 651).

² Same as footnote 1.

³ Petitioner's brief in Supreme Court of Michigan (R. 601); Petition for rehearing (R. 651).

him. He was later accused, together with a gambler friend of the hold-up men, an attorney and the assistant prosecutor of Wayne County, on a charge of having conspired to obstruct justice. It was alleged in the information that the petitioner, apparently in order to get \$1,000 of his own money back at once (less a portion of this sum with which he is claimed to have bribed the police), agreed not to identify his assailants and so fixed it that the charges against them would fail or be reduced.

The information on which petitioner was tried was returned by Judge Homer Ferguson of Detroit, sitting as a one man grand jury under the Michigan statute. It was based upon testimony in the nature of a "confession" given before the one man grand jury by petitioner. For four days immediately prior to giving such evidence (according to testimony of petitioner, which has not been disputed) petitioner had been held incommunicado (R. 242) and had been subjected to violent "third degree" punishment throughout the period (R. 240-250). He was "punch drunk" (R. 245). Petitioner later stated that his confession was false and had been forced upon him by the above mentioned brutal and inhuman treatment (R. 242). Portions of his testimony before the grand jury, however, were read to the trial jury at petitioner's trial in impeachment of testimony which he had previously given in his own behalf.

Petitioner was convicted by the jury and was sentenced to serve from three to five years in the state penitentiary. On appeal the Supreme Court of Michigan upheld the conviction with two judges dissenting.

Specification of Errors to Be Urged.

1. The use at petitioner's trial of portions of the "confession" which had been obtained from him as a result of protracted physical and mental torture, and while he

was unlawfully held incommunicado, resulted in lack of due process within the meaning of the Fourteenth Amendment to the Constitution of the United States.

2. The petitioner, by being compelled to testify before the grand jury under the circumstances of the instant case, in an investigation directed partly at him, was deprived of his constitutional privilege against self-incrimination.

3. Petitioner's conviction was based upon an information, the foundation of which was evidence obtained in disregard of liberties deemed fundamental by the Constitution of the United States, and the refusal of the court to quash the information or set aside the conviction thereon deprived petitioner of his rights under the Fourteenth Amendment to the Constitution.

Reasons for Granting the Writ.

1. This Court has indicated that it will review and set aside convictions in State courts, which are based on confessions secured by "physical or mental torture and coercion", or where defendants "have been unlawfully held incommunicado without advice of friends or counsel".⁴ Such is the testimony of petitioner in the instant case and it has not been challenged in the record. The fact that specific objection was not made to the use of the confession in the trial court is immaterial.⁵

2. This Court should now reexamine the doctrine of *Twining v. New Jersey*⁶ and hold that the Fourteenth Amendment was intended to make secure against state invasion the constitutional inhibition against compulsory

⁴ See, for example, *Chambers v. Florida*, 309 U. S. 227, 84 L. Ed. 716; *Ward v. Texas*, 316 U. S. 547, 86 L. Ed. 1663.

⁵ *Brown v. Mississippi*, 297 U. S. 278, 80 L. Ed. 682.

⁶ 211 U. S. 78, 53 L. Ed. 97.

self-incrimination which is protected from Federal violation by the Fifth Amendment. Such a course is justified by the "current of opinion" referred to by this Court in *Chambers v. Florida*.⁷

3. This Court should now consider and resolve the constitutional issue raised but not decided in *McNabb v. United States*,⁸ namely that a conviction, even in the State courts, the foundation of which is evidence obtained in disregard of liberties deemed fundamental by the Constitution, cannot stand. The information in this case was based upon evidence obtained from the petitioner after he had been in the custody of the arresting officers for four days, and before any order of commitment was made. Due process should be required throughout State court proceedings by which a citizen is subjected to deprivation of his liberty.⁹

Conclusion.

For the reasons stated, it is respectfully submitted that the petition for writ of certiorari should be granted.

EDMUND D. CAMPBELL,
Southern Building,
Washington, D. C.,
Attorney for Petitioner.

DOUGLAS, OBEAR & CAMPBELL,
Washington, D. C.,
Of Counsel.

⁷ 309 U. S. 227, 235, 84 L. Ed. 716, 721, Note 8. See also *Brown v. Mississippi*, *supra*.

⁸ 318 U. S. 332, 87 L. Ed. 579, 584.

⁹ See *McNabb v. United States*, *supra*;
Brown v. Mississippi, *supra*;
Mitchell v. United States, — U. S. App. D. C. —, decided October 25, 1943 (not yet reported).